

12/22/93

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
MAHONING VALLEY SANITARY DISTRICT,) Docket No. CWA-AO-08-90
)
Respondent)

ORDER GRANTING MOTION FOR ACCELERATED DECISION ON LIABILITY
AND SETTING EVIDENTIARY HEARING DATE

I. Complainant's Motion for Accelerated Decision

Pursuant to Section 22.20(a) of the U.S. Environmental Protection Agency (EPA) Rules of Practice (Rules), 40 C.F.R. §22.20, the Complainant, Region V of the EPA, has filed a Motion for Accelerated Decision on the issue of liability in the above captioned case. The Motion for Accelerated Decision seeks to establish the liability of the Mahoning Valley Sanitary District (Respondent or Mahoning) for violations of Section 301 of the Clean Water Act (CWA), 33 U.S.C. §1311. The alleged violations involve discharges of sludge from Respondent's water treatment facility in Youngstown, Ohio into Meander Creek, a navigable water of the United States, without a permit required under Section 402 of the CWA, 33 U.S.C. §1342. The alleged discharges occurred during 1983 through 1988 and, as set out in the memorandum supporting the Motion for Accelerated Decision, involve three discharge circumstances for which the Complainant is seeking a civil penalty of \$125,000. Complainant asserts that there are no genuine issues of material fact and that, therefore,

it is entitled to an accelerated decision as a matter of law establishing the Respondent's liability for the violations alleged in the Complaint. Complainant further contends that the only remaining issue before the Court is whether the penalty calculation it has proposed is appropriate.

The Respondent has filed no opposition to the Complainant's Motion for Accelerated Decision and the prehearing exchange information submitted by Mahoning indicates that it is contesting the amount of the penalty being sought.

Section 22.20(a) of the EPA Rules of Practice, 40 C.F.R. §22.20(a), authorizes the Presiding Judge to render an accelerated decision as to all or any part of the proceeding if no genuine issue of material facts exists and a party is entitled to judgment as a matter of law.

Since Respondent has filed no opposition to the Complainant's Motion for Accelerated Decision, that Motion is hereby granted and judgment is entered in favor of the Complainant on the issue of liability for the violations set out in the Complaint. Accordingly, the allegations on liability set forth in the Complaint are hereby adopted and incorporated by reference into this Order, as are the details of the violations specified in the Complainant's Motion to Dismiss and its supporting memorandum.

However, it is apparent from the prehearing exchanges that the parties are in substantial disagreement over whether the penalty calculation proposed by the Complainant is appropriate

for the violations contained in the Complaint. As a result, this case must proceed to an evidentiary hearing on the issue of the proper amount of civil penalty to be assessed against the Respondent for the violations set out in the Complaint.

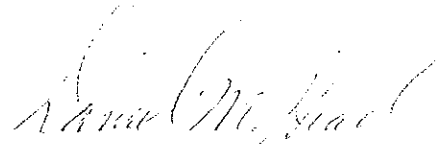
II. Evidentiary Hearing Date

In light of the above ruling, this proceeding is now at issue and can be set for hearing on the appropriate amount of civil penalty to be assessed against Mahoning for the violations set out in the Complaint. Accordingly, the evidentiary hearing on the issue of penalty amount is hereby set for 10 a.m. on Tuesday, March 1, 1994. The parties are directed to notify their witnesses immediately of this hearing date to insure their appearance. If subpoenas are necessary to compel attendance, such subpoenas should be requested from the Presiding Judge at least 20 days in advance of the hearing. The parties are also requested to resubmit in writing, by January 10, 1994, their views on the location of the hearing, as well as an estimate on how many trial days they expect the evidentiary hearing to last. While both parties suggest Chicago, Illinois as the hearing location in the prehearing exchanges, the site of the discharges and of the Respondent's operations is in Youngstown, Ohio and Mahoning County, Ohio. Under Sections 22.19(d) and 22.21(d) of the Rules, it would appear that Youngstown, Ohio would be the more appropriate location for the evidentiary hearing.

A further order designating the site of the hearing will be

issued as soon as possible after the parties submit their hearing location preference on January 10, 1994.

SO ORDERED.¹



Daniel M. Head
Administrative Law Judge

Dated: December 22, 1993
Washington, D.C.

¹ Because of the action taken herein, the Complainant's Motion for Status of Action is denied as moot.